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September 17, 2012

Timothy Schott
Deputy Superintendent
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034

Dear Deputy Superintendent Schott:

We appreciate you and your staff taking the time to convene a discussion of stakeholders regarding the sale of preneed insurance in Maine. We believe the dialogue was valuable in unearthing and identifying some of the misunderstandings about this product. Our company sells preneed insurance and pays a commission for that sale, without incident, in forty-eight other states. We are hopeful that in the near future we will be authorized to do so in Maine.

Preneed Insurance

At the outset, we would strongly urge the Bureau to provide a description of preneed insurance in its report to the Joint Standing Committee on Insurance and Financial Services, especially in light of several comments about preneed insurance made at the public hearing earlier this year and at the stakeholder meetings. While we understand that the Bureau does not view its role as making a specific recommendation about whether this product should be sold in Maine, we believe it is entirely within the scope of the Committee's request to explain specifically what preneed insurance is and how it is sold. Given that preneed insurance is licensed with the State Bureau of Insurance in the vast majority of other states and that payment of a commission commensurate with the sale of the policy is permitted, the Bureau has the ability to draw broadly upon those examples regarding this matter.

At a minimum, we would recommend that the Bureau report include the following points in its description:

- Preneed insurance is any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured.
- Typically, the policy provides coverage of \$10,000 or less and pays for a funeral.
- The premiums are paid over a limited period of 3, 5, 7, or 10 years.
- After the end of the premium-paying period, the policy is paid up for life.
- Preneed insurance can be paid for in monthly payments and covers the full value of the funeral immediately, even if only one payment has been made.
- Preneed insurance is financially backed by the state Guaranty Association.
- A commission is paid to the originator of the preneed policy, as is done with any other type of insurance.

ACA

We would ask that the Bureau delineate for the Committee the difference between preneed insurance and the fraternal benefit programs that were referenced by the Maine Funeral Directors Association (MFDA), both at the public hearing on LD 1717 and at the meetings that you convened. Making this distinction is essential for the Insurance and Financial Services Committee to have an accurate portrayal of the preneed insurance product.

At our August meeting, a representative from MFDA claimed to have “several examples” of consumers who purchased preneed insurance and were subsequently left without coverage because the organization they bought the product from became insolvent. We have yet to be presented with that information. Moreover, we are unaware of any such incident taking place in any of the forty eight states where preneed insurance is sold.

We suspect that these “examples” are, in fact, consumers of ACA, a fraternal life and health benefit society based in New Hampshire. ACA sold “funeral coverage” to members and their families in Maine. In September 2008, a New Hampshire Superior Court placed ACA into rehabilitation because of solvency issues. As a result, a number of Maine consumers lost money.

As Bureau staff noted during the discussion, the product that ACA was selling was not preneed insurance. ACA is not an insurance company and their product is not protected by state insurance guaranty funds. By contrast, the preneed product sold by Assurant, Forethought, Homesteaders and NGL is an insurance product. It is filed with the state Bureau of Insurance and covered by state guaranty funds, thereby guaranteeing that policyholders will receive 100% of the face amount of those policies. (All four of the companies referenced above currently are rated A- (Excellent) or better by A. M. Best rating agency).

The fact that ACA collected money from consumers under the guise that the company was selling preneed insurance demonstrates consumer demand for a true insurance product. More significantly from a consumer protection perspective, ACA’s insolvency underscores the need that products in this realm should be sold by a licensed insurance carrier and protected by state guaranty funds.

Standard Whole Life Policy

We would request that the Bureau also delineate for the Committee the difference between a preneed insurance policy, which is filed as a whole life policy, and a standard whole life policy. Making this distinction is essential for the Committee to understand how preneed insurance works and the inherent benefits the policy provides.

A typical whole life insurance policy requires payment for life. It provides the beneficiary a specific dollar amount. Even if the policy is assigned to a funeral home for the purposes of paying for the cost of a funeral, the funeral home cannot guarantee the prices of funeral goods and services with that policy. Consequently, if the cost of the consumer’s prearranged funeral goods and services increases between the date when the whole life policy was purchased and the date of the funeral, the consumer must pay the increase in the cost.

By contrast, preneed policies are assigned to pay for a specific set of goods and services. The preneed policy is purchased after a consumer preplans their funeral and then that policy is assigned to a funeral home. In turn, the funeral home guarantees that a \$6,000 funeral today will be \$6,000 in the future. The family of the policyholder will not pay more than that amount, regardless of when the policyholder dies.

At the Committee hearing and at the June stakeholder meeting, a representative of the Maine Insurance Agents Association claimed that other insurance products already exist in the market that are nearly identical to preneed insurance. This is fundamentally incorrect. Preneed insurance is not a stand-alone insurance product. It is linked to a funeral services contract. (We would note that the Maine Insurance Agents Association has stated it does not oppose legislation permitting the payment of a commission for the sale of preneed insurance provided that fully licensed life insurance agents are selling the product).

Commissions

We would urge the Bureau to affirm for the Committee that the payment of a commission in connection with the sale of an insurance product is a standard practice in every state. Similarly, the payment of a commission for a preneed funeral contract or prearrangement that is funded by a preneed insurance policy is a standard practice in forty-eight states. Notably, the National Funeral Directors Association (NFDA) has promulgated a “Model Consumer Protection Guidelines for State Preneed Funeral Statutes” that inherently recognizes the practice.

Representatives from the MFDA indicated that the payment of a commission creates a “conflict” because the person receiving the commission has a vested interest in the customer purchasing the policy. We would note that representatives of the MFDA also acknowledged that they charge a commission for the sale of goods related to a funeral such as caskets and urns. We see no difference between the sale of those goods and the sale of an insurance policy.

The Bureau should directly address and dispel the claim that the payment of a commission creates a conflict, since such a claim impugns the fundamental nature of most insurance transactions. The payment of a commission to the originator of a preneed insurance policy is substantially similar to the arrangement made for other types of insurance. Forty eight other states have concluded that no conflict exists when a commission is paid on a preneed policy. To the extent that any states have concluded such a conflict exists, many have promulgated rules mandating the disclosure of any commission in order to resolve that conflict. A majority of States have rules that mirror the model rules developed by the NFDA. (MFDA’s website indicates that it has a representative on the NFDA’s policy board.)

Finally, the Bureau of Insurance is authorized to investigate and prosecute abusive sales tactics, unfair trade practices, improper payment of commissions and any other illegal or unethical activity related to insurance market in Maine. The oversight of preneed insurance by the Bureau would be no different.

Proposed Legislation

The three preneed insurance providers that participated in the Bureau’s LD 1717 stakeholder discussions – Assurant, Homesteaders Life Company and National Guardian Life Insurance Company - have submitted proposed legislation that is responsive to a number of concerns raised by members of the stakeholder group. While we believe that these concerns are less a reflection of the merits of preneed insurance and more a reflection of the discord that exists between independent funeral homes in Maine and those owned by Service Corporation International, we have offered this proposal in the interest of finding common ground. As was noted by Gerry Krauss of Homesteaders Life, preneed insurance providers work effectively with all funeral home owners in forty-eight other states.

The proposal makes no changes to the licensure of life insurance agents. The proposal maintains the prohibition against solicitation of prearranged funerals and funeral business while allowing a funeral director to discuss a preneed insurance option for a consumer who has approached the funeral home to preplan a funeral, just as is done currently with a trust. The proposal also adopts the Model Consumer Protection Guidelines set forth by the NFDA that require disclosure to the consumer of the payment of a commission and the identity of the individuals or entities to whom it is paid.

On behalf of Assurant, I would like to thank the Bureau for its efforts in generating a thoughtful discussion of this issue. We look forward to further progress.

Sincerely,

Newell A. Augur
On behalf of Assurant, Inc.